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Speech on the Occasion of the Constitutional Cases Conference of Osgoode Hall Law School[‡]

The Right Honourable Adrienne Clarkson,
PC, CC, CMM, COM, CD^{*}

Friends and fellow citizens who delight in our constitutional processes, it was with great pleasure that I accepted the invitation of Patrick Monahan to address your annual conference today and that I did so without reference or desire for Chatham house rules. What I'm going to say to you today does not have to be said *in camera* nor should it be whispered about. As the 26th Governor General of Canada, I think I bring something to the table today which none of you as constitutional scholars and experts can do: mainly, that I'm the only one among you who has been Governor General of Canada.

Anyone reading our Constitution knows that the role of the Governor General has deliberately been left rather vague. In terms of formal constitutional powers, MacGregor Dawson says this: "The Governor General's principal function is to represent the Crown, the institution which embodies executive authority. And in this capacity, the Governor General rarely takes the initiative himself or follows his own inclinations, but rather speaks and acts in accordance with the counsel given by his constitutional advisors, the Cabinet."

We know from the writings of Walter Bagehot that the representative of the Crown "encourages, advises and warns". Dawson adds, rather grimly, that "the value of the office of the Governor General depends entirely upon the willingness of the incumbent to forego his own wishes, to devote himself with a single mind to the public good and to be content with exercising a moderating influence, quietly and without public acknowledgement or acclaim". Obviously, a saint is called for but, needless to say, they are rarely appointed!

[‡] Toronto, Ontario, Friday, April 17, 2009.
^{*} Governor General of Canada 1999–2005.

As W.L. Morton put it, “[c]haracter is of more than usual importance to someone who, by nature of his office, must persuade rather than command.” But in the words of a contemporary scholar, “The absence of any comprehensive study of the Governor General’s Office has contributed to a pervasive misunderstanding of Canadian constitutional history.” The fact that we have had a Governor in this country since Samuel de Champlain in 1608, and that we have had 26 since Confederation in 1867 — this very stability and quiet continuity obscures the fundamental changes in function that have occurred.

I was Governor General for a period of six years less 10 days. I have to indicate to you (and there must be some of you who are not aware of this) that there is no fixed term for the holder of the office of Governor General. When I walked into my office for the first time, I saw little carved wooden plaques around the mouldings of the ceiling giving the terms of my predecessors beginning with Monck, 1867–1868 and the previous plaque to mine was LeBlanc, 1995–1999. This was the only indication, visually, and intellectually that I had of what the term might be. The average of my predecessors’ terms seem to work out to five years but there is no such thing as a contract or even a verbal indication as to the length of the term. I assumed it to be five years as it seemed to me from my observations in my years as a journalist that that’s generally how long the Governor General was in office. Mr. Massey’s term in 1952 to 1959 seemed to me quite reasonably longer than the average because after all he was the first Canadian Governor General and everybody had to get used to that idea, including him.

Right from that ambiguity of the length of term lies an uncertain area, an unclear message as to the way in which the office must be fulfilled. If it is an appointment, then there should be a term to the appointment. In the days of the British Governors General who were sent out by the Colonial Office of Great Britain, the term was customarily five years. All the wooden plaques around my wall said so. The Governor General would set out by boat from Britain with his family and usually a great deal of furniture, as Rideau Hall was notorious for having very little in terms of material comforts so the Governor General would arrive with household goods including china, silver, and presumably tablecloths and other linen, and land in Quebec City, where he would be sworn in as soon as he arrived on Canadian soil. Then, properly empowered, he would proceed by train to the capital. In the meantime, his predecessor would have taken the boat in the opposite direction and departed for his natal shores taking with him all his worldly goods.

Sometimes they left behind things they thought we colonial people would be particularly touched by: I am thinking of some Springer spaniel portraits which bear the touching attribution “After the Style of Landseer”. Or a number of regal portraits, very large, 50 per cent larger than life, which were labelled as copies of the portraits which lurked somewhere in England and were mainly copies of the copies, probably having painted siblings in New Delhi, Canberra or Auckland.

The turnover of the authority and the goods happened with clocklike regularity and with the advent of Vincent Massey, the habits simply continued in a half-hearted way. It had been the custom that you simply did not meet your predecessor except very briefly — perhaps a light lunch — and that they were bid farewell by the government of the day at a transportation hub — an airport or train station — before the new incumbent was put up at Rideau Gate (the guest cottage of the government) awaiting the installation about a week later. This seemed to be in 1999 a very bizarre way of proceeding as I had known my predecessor in another life, had been his guest on a state visit to India and Pakistan in 1997 and knew that he would continue living in New Brunswick. In my own case when it came time to leave, I made it very clear that I intended to attend the installation ceremony of my successor in order to show that there was a continuity in the legitimacy of the office. I wasn’t going to live in England; I was going to live in Toronto and Georgian Bay, Ontario. I believe this strongly to be a necessity for our system and I think it strengthens the office. The Governors General today do not disappear to foreign shores and indeed when I became Governor General there were three of my predecessors who were in good health and yet only two of them were invited to the installation, the immediate predecessor Mr. LeBlanc having been put on a train to New Brunswick. We have just seen in the United States how power passes from the holder of an office to the new holder of an office in order to emphasize the legitimacy and the democratic and open way in which power is transferred. This is something which is very necessary for Canada.

To a great extent I think we are caught thinking that there should be mystery around the office but then it’s so hard to keep a mystery around an office when the person in the office is (a) an ordinary Canadian who has reached extraordinary office; and (b) an ordinary Canadian who will return to life and activities in our country. I would hope that all former Governors General would continue to live their lives in Canada as Canadian citizens contributing to the future of the country as they had

contributed in the past. It is certainly what I intended to do and have done.

I participate in activities which continue to contribute to our national life and to use the talents which were part of my life before and during my tenure as Governor General: my ability to communicate, my desire to better the life of immigrants and new citizens and my connection with the military which happily culminated in my becoming Colonel-in-Chief of the Princess Patricia's Canadian Light Infantry, the first Canadian citizen to be a Colonel-in-Chief and the first not to be of the British Royal Family.

I became Governor General at the age of 60 and left when I was 66, which means by actuarial standards that I will not be so young as to be a burden on the public purse for many decades, nor so old that I cannot continue to run around in my right mind. If the current statistics are any guide, I will be around for another 14 years or so, having happily celebrated my 70th birthday with a minimum amount of shock two months ago. At that point, according to the custom of our country, I will have a state funeral and be buried in a place which is suitable for visiting. That's what happens to Governors General and Prime Ministers when they shuffle off their mortal coil. In the meantime I believe that it is my duty and my pleasure to continue the discussions about the way in which our country is run from a strictly non-partisan point of view with the privilege, arguably, of having seen more of this country than any other Canadian alive.

The Canadian system has evolved but is basically a very stable one with a Constitution which is the second oldest in use in the modern world. Its evolution has placed the Canadian head of state in an interesting position. Constitutionally, the Governor General has responsibilities, some of which are symbolic but nonetheless meaningful, such as the opening and closing of Parliament, but must ensure that the country always has a Prime Minister to lead the democratically elected government. McKinnon writes in *The Crown in Canada* that "a Prime Minister wields power but does not possess it" while "the Governor General is the non-political representative of the people." I took that very seriously as Governor General. *Of the people*. This is the potential and the actual strength of this institution. On the level of strict constitutional authority, McKinnon compares Governors General to

constitutional fire extinguishers with a potent mixture of powers for use in great emergencies. ... Like real extinguishers, they appear in bright

colours and are strategically located. But everyone hopes their emergency powers will never be used; the fact they are not used does not render them useless, and it is generally understood there are severe penalties for tampering with them.

Critical interventions like this have happened infrequently in our history: when Sir John Thompson died in 1895 and Lord Aberdeen asked Mackenzie Bowell to become the Prime Minister. The business of government in our democracy is carried out by elected officials. And the Governor General is apprised of what happens in the government and should make herself aware always of the shifts in mood in the various parties who have seats in Parliament. This is how the role of Governor General has been constitutionally conceived. The Governor General opens and closes Parliament, gives Royal Assent to all Bills, is Commander-in-Chief of the Canadian Armed Forces and embodies Canada to foreign emissaries representing their countries here.

The role of the Governor General requires judgment, knowledge and intuition. I think intuition is much maligned and not very well understood, but those who use it as frequently as I have all my life, learn to trust it very much. Initial impressions are often very accurate ones and if you can back them up with some facts and then exercise some decisions with a bit of courage, you'll be okay. Winston Churchill said that courage is the most important virtue because it is the one that underlies all the others. I think it's something that we should expect in all our leaders. It's exercised in different ways of course. Norman Bethune, about whom I have just written a biography, said to the Chinese when he was opening one of his village medical schools during the Chinese guerilla war against the Japanese, "[e]very leader begins by leading himself," which brings into play a number of things about self-discipline and vision. On the other hand, the man who spent 22 years as a very successful Prime Minister, Mackenzie King, said "I really believe that my greatest service is in the many unwise steps I prevent." Leadership I think involves moral purpose and a sense of an ethical compass. And sustained success as a leader is never solitary. The best leaders can watch and sense, and this is where intuition comes in, where people are going and gently and insistently herd them, rushing around on all sides, a kind of good sheepdog. And sheepdogs are extremely clever. They get the herd to go where they want them to go. And they know how to get the sheep to eat around the whole pasture evenly.

Leadership in the role of the Governor General is of primary importance because the Governor General listens to a lot of people

talking. In my own fulfilling of the role, I felt it was important not only to have my frequent contacts with the Prime Minister, but also to meet with the Leader of the Opposition and as situations arose, Ministers of the Crown. Just because the Governor General is apolitical does not mean that he is like the three monkeys hearing, speaking and seeing no evil, particularly in order not to do something. The Governor General is part of a true democracy and true democracy is more than simply a method of choosing and authorizing governments. It is critically important for a Governor General to know what is going on. In the days of the British Governors General, they often sent their wives to sit in the gallery of the House of Commons. You know, of course, as good constitutional people that the Governor General never enters the Houses of Parliament except to deliver the Speech from the Throne in the Senate or give Royal Assent. But Lord Aberdeen would send Lady Aberdeen several times a week to sit in the gallery to hear the debates. It must have made very enlightening dinner table conversations. When Sir John Thompson, the 50-year-old Prime Minister, suddenly died in 1896, it was up to Lord Aberdeen to ensure that there would be a Prime Minister out of the ruling Conservative party. He consulted with them and instead of choosing either of two rather bright lights in the Cabinet, offered the position to Mackenzie Bowell, 76 years old and not noted for sparkling intelligence. Aberdeen did this with the full knowledge that within a year, there would have to be an election given the terms of elections as we have them; Bowell was trounced, enabling the charismatic and French-Canadian (the first), Wilfred Laurier to lead the Liberals to power. I have to say I have read every detail of this particular manoeuvre and find it belongs in a category all its own for statecraft in the Richelieu, Machiavelli class. And it happened right here in our own dear country. We are all more entranced by the King/Byng event, but the one that tells you how authority and power using perfectly legitimate means can bring about a result not thought of by others is the Aberdeen situation.

As Governor General, I always felt it was necessary to know what was going on, travelling to 80 to 90 different communities a year, meeting thousands of people and having discussions with people in every region of the country. The Governor General can help Canadians understand, by visiting and encouraging dialogue, that they can develop their own capacities as citizens. The responsibilities that exist in this role extend beyond the purely constitutional. Encouraging awareness of our social and cultural opportunities helps people to engage in their society

with the utmost participation. As John Stuart Mill argued 150 years ago, the good society is one which permits and encourages everyone to act as “exerter, developer and enjoyer ... of his own capacities”.

If democracy, as Macpherson said, is to be more than just a way of choosing and authorizing governments every few years, it must be exercised in such a way that citizens are continually aware of the kinds of questions that an enlightened society should be posing to itself. All decision-making must be preceded by the asking of useful questions.

I could usefully indicate to different ministers some of the concerns of Canadians. From seemingly small problems like placement of fish ladders in salmon rivers to concerns about juvenile crime in a medium-sized city — all of this seemed to me to be the kind of thing that the Governor General could usefully bring to the elected officials of the country.

There is a difference between authority and power. And if the Governor General does their job right, they can bring authority to bear on questions which are important to Canadians. The power to change them lies always in the hands of elected officials. We must never forget that our parliamentary traditions have gone through an evolution over time in order to adapt to the fundamental constitutional principles of modern governance.

I will not discuss or pass judgment on any decisions or actions of my successor. It would simply be inappropriate to do so. As a passionate student of history and ideas, I studied with great intensity the actions of all my Canadian predecessors and learned a great deal from them, particularly at the time when the minority government under Prime Minister Paul Martin took place in 2004. I spoke with some of you and others of your ilk, and I did all reading I could including an M.A. thesis from Queen’s University on the minority government of 1972-74 which saw Prime Minister Trudeau faced with Robert Stanfield and David Lewis. This minority government was arguably one of the most fruitful and interesting that we have had. Having had nearly four years of a majority government under Prime Minister Chrétien, I had had the opportunity to observe how government ran and of course to look at Cabinet documents on a regular basis as legislation was going through Parliament and then finally received Royal Assent. This work done by the Governor General on learning about all legislation is one of the fundamental jobs of keeping up with the processes of our government. The Governor General must understand what the legal ramifications are of bills, to which she gives assent. I found that the documents which

were regularly provided to me were always interesting and even when they were boring, they were interesting. Drafting of laws is not ever going to get nominated for the Nobel Prize for Literature. And I always enjoyed having the visits from emissaries of the Privy Council Office to sign documents and to give explanations which always increased my admiration for their impartiality and their ability to explain clearly.

My relationship with my Prime Ministers was of great importance to me. I had read my Bagehot in university and I had observed closely the behaviours of our elected politicians as a journalist for many years. I feel it's quite important for the Governor General to explain what that kind of relationship is like. Mr. Chrétien would come to Rideau Hall on a regular basis and use the Prime Minister's staircase and door. This architectural amenity is on the east side of Rideau Hall and it was built especially for a Prime Minister to be able to come to see the Governor General without having to go through the front door. The only thing I changed about it was that I tried to make the door a little more attractive by removing electrical boxes and drainpipes which seemed to me to be encroaching on the geographic nature of the privileged relationship! Sometimes discussions were held on the telephone if there was a particular urgency. For instance, Mr. Chrétien phoned me one morning just after 9:00 to tell me that in the afternoon he would be going into the Commons to announce that Canada would not take part in the invasion of Iraq. He felt it was appropriate and correct to alert me to this before anybody else told me. I may add here that in my three-and-a-half years with Mr. Chrétien as my Prime Minister I learned an enormous amount because this was a man who had held nine Cabinet portfolios and had been in the House of Commons for nearly 40 years. He knew how everything worked, he understood the system and he knew what his role and the Governor General's were. He loved our history and wore Laurier's tie-pin for all Speeches from the Throne as I wore the brooch fashioned from the Last Spike in the CPR. That everything that Baldwin and LaFontaine put into place in 1848 with the sagacious aid of the then Governor General Lord Elgin would be continued. You all know as well as I do that the Constitution Act of 1867 does not mention the Prime Minister or the Cabinet but we all know that that's where the real power lies. And the Governor General has to know it too.

I think there is a place nowadays for the Governor General to help Canadians understand what their political system is and what responsible government is. I was always trying through different speeches including my C. Brough MacPherson Lecture of 2004 to show what the role of the

Governor General is today. However, as our whole system is evolving, the role of the Governor General also evolves.

Much is made of the fact that the Governor General should not “say anything”. I think this is up for hearty discussion because at the time when Bagehot was writing, the “mystery” surrounding the Crown was embodied in a Queen who had been in black mourning clothes for 40 years and indeed was a mystery to everyone. Whether or not that mystery should continue in Canada in 2009 is worthy of hearty discussion.

My main concern is that the Office of Governor General be maintained with its integrity and with an understanding of what it actually does. If this means that the Governor General should explain to the Canadian people what the role of the Governor General is and what are the guiding principles by which the Governor General makes decisions then so be it.

At the time of November/December 2008 what struck me most was not what was going on in Ottawa, but what was going on in people’s heads in the country. The abysmal ignorance shown by people about our own very worthwhile and sturdy form of government was hilarious or horrifying depending on your point of view. The basic principles of responsible government — that we elect individuals who then represent our interests in Parliament and that the largest group of them under a party banner form the government, did not seem to be in the least understood by the general population. This signals a huge failure in our public education system, our media and our politicians themselves. All politicians in their own interests in a democracy should attempt to enlighten the voters as to what their real rights and responsibilities are and as to what Canadian parliamentary democracy is about. Anything else is a betrayal of all the things that we have believed in and worked hard to achieve.

I said elsewhere recently that I thought we had somehow got mesmerized in November by the American election and since it was a great moment not only for the United States but for the world at large, we lost sight of our own political traditions because we were so riveted to what was happening next door. I said that even if we are mouse-like in comparison to our elephantine neighbour, we do have an old, continuous, fully articulated organic system — a strong skeletal infrastructure of institutions, healthy flesh due to a constant democratic diet and an intriguing triangular personality. What could be more interesting than that? I really think Canadians should learn to live in their own moment. If we are all failing each other in not knowing what our political system

actually is and how we can make it do the most for us as citizens, we fail ourselves, we fail our past and we have no future.

I do believe that the Office of the Governor General must evolve. I think it has to be clearer to Canadians why somebody is Governor General. I had my whole life in communications through television and journalism; I was the agent-general for Ontario in France for five years; I was president and publisher of McClelland & Stewart the Canadian publishers and I also did much public service serving as chairman of the Museum of Civilization in Ottawa and on other business, cultural and social service boards throughout my career. Yet still I think Canadians would have had a right to know what I stood for and what kind of job I would do as Governor General. To that end I think it would be useful to us when a person's name is put forward by the Prime Minister that a special parliamentary committee be struck to confirm the candidate. Perhaps this could happen on television and people could ask questions of the person who is going to hold the highest constitutional office in the land. Canadians have the right to know who is going to be their Governor General and to ask questions. I know the traditionalists will all say this could be very undignified but generally I find that Canadians are not as undignified as they think they could be. It would be very useful to know whether the future Governor General knows where the Mackenzie River Delta is or a bit about the Manitoba School Question or the Conscription Crisis of 1917. After one would hope a satisfactory session with a committee, I would like to see the Governor General proclaimed in Parliament and legitimized. This is very similar to what happens in Germany, where the federal president is elected by a special convention of the members of the popular elected bodies. There should also be a fixed term for the Governor General and I would suggest that six years is appropriate so that the Governor General has a chance to be in place for at least two governments. There should be no possibility of a second term. This is different from the German situation where they do allow a second term. Let's just say having experienced it, that I think six years is a long time in Canada with its six time zones and huge travelling times. I do not believe in the election of a Governor General because no Prime Minister in his right mind is going to want a rival who is elected by a popular vote. Also it would be expensive and I believe this indirect method of choice would be the best. When Parliament ratifies the choice of Governor General that name then would be presented to the Queen and all the appropriate and historic ways that we have had Governors General appointed would then fall into place.

In the German constitution, it states that the President is

the Constitutional organ which represents the Federal Republic of Germany at home and abroad. He does so by making the State — its existence, legitimacy, legality and unity — perceptible in all he does and in every public appearance. This highlights his role as a figure of integration and his monitoring function in his capacity as guardian of the law and the constitution.

Canada deserves no less.

